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Supreme Court of the United States

October Term, 1971

No. 71-49

LOCAL UNION No. 18, INTERNATIONAL UNION OF OPERATING ENGINEERS
Petitioner,

v.

JAMES D. HODGSON, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

J. ALBERT WOLL
736 Bowen Building
815 Fifteenth Street, N.W.
Washington, D. C. 20005

WILLIAM PATRICK CLIFFE
1510 Terminal Tower
Cleveland, Ohio 44113
Attorneys for Petitioner

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Local Union No. 18, International Union of Operating Engineers, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on April 9, 1971.

OPINIONS BELOW

The Sixth Circuit's opinion, which is reprinted as Appendix A, pp. 1a-6a *infra*, is reported at 440 F.2d 485. The opinion of the United States District Court for the Northern District of Ohio, Eastern Division, which is reprinted Appendix B, pp. 7a-18a *infra*, is not officially reported.

JURISDICTION

The Court of Appeals' judgment was entered on April 9, 1971. This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

Section 401(e) of the Landrum-Griffin Act, 29 U.S.C. § 481(e), permits unions to enact, through appropriate democratic means, "reasonable qualifications" on the right to run for union office. The questions presented here are:

(1) Whether an eligibility requirement which sets a standard that could be reasonably met by all the union's members, and is thus valid on its face, becomes invalid *per se* in the event that a substantial percentage of the members choose not to meet that standard, thereby leading to their disqualification for office.

(2) Whether eligibility requirements which impose a financial precondition on the right to run for union office beyond the minimum required for eligibility to vote are invalid *per se*.

STATUTE INVOLVED

The relevant provision of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin), 29 U.S.C. § 481 *et seq.* is as follows:

> "Sec. 401(e) In any election required by this section which is to be held by secret ballot . . . every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) . . ."

STATEMENT OF THE CASE

This is a suit by the Secretary of Labor, pursuant to § 402(b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 482(b) to set aside an election for union officers of Local Union No. 18, International Union of Operating Engineers. The sole question now in

dispute is whether the requirement that a member have paid the full $100 initiation fee set in the Union's Constitution in order to be eligible to run for union office is a "reasonable qualification" on the right to be a candidate within the meaning of § 401(e) of the Act.

1. The undisputed facts are set forth in the Sixth Circuit's opinion as supplemented by the more complete factual statement of the District Court:

> "The membership of Local 18 of the International Union of Operating Engineers is divided into four groups—the Parent Local, Local 18A, 18B, and 18C. The members of Locals 18A, 18B, and 18C are commonly referred to as 'branch' members. Local 18A members are generally employed as oilers, greasers, firemen helpers and apprentices. Local 18B members can operate one or more types of equipment, which come within the jurisdiction of Local 18 and are considered 'journeymen engineers.' Local 18C members are quarrymen, sand and gravel employees, equipment shop employees, and technical and field engineers. . . . The members of the Parent Local are skilled operators of equipment which comes within the jurisdiction of Local 18, have demonstrated ability to earn their livelihoods performing this work, and have paid the Parent's initiation fee." (App. B. p. 8a).

> "[A]s of July 1, 1965, immediately prior to the election in question, . . . membership [in the] Parent Local and three sub-locals [was] . . . as follows:

Parent Local	4349 members
Local 18A	579 members
Local 18B	4840 members
Local 18C	1571 members

> • • •

> "Members of Local 18 sub-locals may become eligible

to run for union office by transferring to the Parent Local. In order to transfer to the Parent Local, a sub-local member must pay the Parent Local's initiation fee, less the initiation fee he had already paid to the sub-local.

"The initiation fee for each of Local 18's subdivisions is as follows:

Parent Local	$100
Local 18A	$ 25
Local 18B	$ 25
Local 18C	$ 10

* * *

"The only benefits received by members of the Parent Local not shared by members of the sub-locals are:

(1) An additional $500 in life insurance;

(2) A paid-up life membership after 30 years (five of which years may be as a member of a branch); and

(3) The right to run for and hold union office.

Otherwise, all members of Local 18 enjoy identical benefits from union membership and may participate fully in union government." (App. A. pp. 3a-4a).

"Members of the Parent receive no increment in wage rates over branch members by reason of membership in the Parent Local. Wages are determined by the equipment or machinery operated, or the kind of function performed. Members of the Parent receive no preference over members of the branches in job referrals.

"No branch member has ever been barred from joining the Parent. The consistent policy of Local 18, and the Parent in particular, has been to encourage branch

members to transfer, by letter, notices in the Union's newspapers, and orally at meetings.

"Local 18 has kept initiation fees relatively low for admission into the branches in order to compete effectively with other labor organizations in the recruitment of new members, and to give new men an opportunity to try out work with Local 18 before making a permanent or long-run commitment.

* * *

"Local 18 views the requirement of initiation fees for admission to the Parent as a method of assuring a more highly motivated potential officer corps, who have demonstrated a greater degree of interest or stake in Local 18 by a relatively limited commitment.

"Additional income derived from transfers to the Parent by higher dues and initiation fees are important to Local 18 in meeting the substantial expenses of operating the Union." (App. B. pp. 8a, 11a-12a).

2. The District Court, while noting that the issue posed here was, in its judgment, "a very close one,"[1] concluded

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[1] As the District Court expressly recognized, the following substantial considerations support the contention that Local 18's full initiation fee requirement is lawful (App. B. pp. 14a-15a):

"In the first place, only approximately 60% of Local 18's membership is disqualified from seeking office by virtue of the requirement of Parent membership. This percentage is distinctly lower than the [75% to 98%] which other courts have found before declaring office restrictions, "unreasonable" under the Act. Moreover, the percentage of membership in the Parent has increased slowly but steadily from approximately 30% to approximately 40% in the past eight or nine years.

"Secondly, the leadership of Local 18 does not appear to have adopted an "entrenched" mentality, the removal of

that the decision in *Wirtz* v. *Local 6 Hotel Employees*, 391 U.S. 492 "compelled" the conclusion that the full initiation fee requirement was unlawful (App. B. pp. 14a, 15a).

The Sixth Circuit affirmed stating (App. A. pp. 4a-5a):

> "Local 18's restrictive eligibility rule precludes over sixty per cent of its members from seeking union office. The Supreme Court held in *Wirtz* v. *Hotel Employees Union Local 6*, 391 U.S. 492, 499, that:
>
> * * *
>
> 'The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.'
>
> We hold that the rule in question is manifestly unreasonable."

As a secondary ground of decision the Court of Appeals also held (App. A. p. 6a):

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which was the principal intent of the Act. It is undenied by the Secretary that no branch member who expressed a desire to transfer and was willing to pay the initiation fee was ever denied entrance to the Parent. Moreover, the evidence is clear that the leadership actively and persistently encouraged branch members to transfer to the Parent. In fact, the additional insurance and paid-up membership benefits of the Parent membership were included by Local 18 with the express purpose of inducing transfers to the Parent. Finally, Local 18's two purposes in requiring the additional initiation fees appear to be legitimate and rational measures. Those purposes are: (1) to raise additional revenue to meet the operating expenses of the union, and (2) to attract for the Parent persons more likely to be motivated and interested in union affairs by this relatively limited stake, or commitment." (footnote omitted)

"that it is unreasonable to require that an individual who has met all financial and other prerequisites to becoming a union member in good standing to pay an additional $75 to $90 for the right to run for union office."

REASONS FOR GRANTING THE WRIT

1. (a) The legal weight to be given the fact that a substantial number of union members choose not to qualify pursuant to a candidancy eligibility requirement that could be reasonably met by every member has proved to be one of the most intractable, and most litigated issues, raised by Title IV of the Landrum-Griffin Act. Compare *Shultz* v. *Local 6799 Steelworkers,* 71 LRRM 2820, 2822-2823, 2826 (C.D. Cal.), *affirmed on another ground* 426 F.2d 696 (C.A. 9), *Court of Appeals' opinion affirmed sub. nom. Hodgson* v. *Local 6799 Steelworkers,* 39 U.S.L.W. 4737, with App. A. pp. 4a-5a. At present the Secretary of Labor takes the position that under the principles announced in *Wirtz* v. *Local 6 Hotel Employees,* 391 U.S. 492, the percentage of members eligible is determinative and that a requirement that could be reasonably met by every member, although valid on its face, is nevertheless "invalid *per se*" if less than a substantial majority choose to qualify. Petition For A Writ Of Certiorari in *Hodgson* v. *Local 6799 Steelworkers,* No. 655 Oct. Term 1970, pp. 15-16; Sec. of Labor's Br. in No. 655, pp. 22-23. In 1966, however, the Secretary took the opposite view. In what we submit is the proper statement of the applicable law he pointed out:

"It would be less than fair to attack a . . . requirement simply because of the failure of union members to [meet its standards] (thus leading to their disqualification for office) as long as the requirement

itself could be reasonably met by all members and was uniformly applied." Opinion letter from Frank M. Kleiler, Director, Office of Labor-Management and Welfare-Pension Reports to the Honorable Jacob K. Javits, dated December 5, 1966.

In *Local 6799 Steelworkers* the Secretary advised the Court that prompt final resolution of this question as to the "principles governing the determination whether restrictions on candidacy for local union office are reasonable" is of "national importance in the administration of the Act." Petition in No. 655, Oct. Term 1970, pp. 14-15. In light of this representation an unlimited writ of certiorari was granted in that case even though the Ninth Circuit had not passed on the validity of the meeting attendance rule in issue there since it ruled that the Secretary lacked the authority to challenge it (426 F.2d at 971-972). An authoritative determination last term was, however, pretermitted by the holding in *Local 6799 Steelworkers* "that internal union remedies were not properly exhausted and that the Secretary was [therefore] barred from litigating the claim" that the Steelworkers' rule was unlawful (39 U.S.L.W. at 4740).

Given the conceded importance of the issue squarely presented here and the confused state of the law the need for further review of the decision below is, we believe, manifest.

(b) The language of § 401(e) demonstrates that union members retain the power to enact, through appropriate democratic means, eligibility requirements over and above good standing membership. An international union rule which sets a standard that every member of the union can

reasonably meet if he chooses to do so is the type of requirement most consonant with the objects of Title IV.

The basic purpose of Title IV is "to protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and, through the election process to keep the union leadership responsive to the membership" in order to check "corruption, dictatorial practices and racketeering," which Congress deemed to be the "abuses of entrenched leadership." *Hotel Employees*, 391 U.S. at 496, 497. For "Congress designed the Title IV to curb the possibility of abuse by . . . entrenched leadership." *Id.* at 503. Some forms of candidacy qualifications can, of course, be utilized by incumbents to entrench themselves. And § 401(e)'s "reasonable qualifications" provision, therefore, interdicts "unduly restrictive [candidacy] qualifications" that serve as "devices which operate . . . [to further] control by incumbents." *Id.* at 499, 505. Thus the Act is designed to insure that all union members who desire to become candidates will have a fair opportunity to do so. The thrust of § 401(e) is to prevent a majority from structuring the union's rules so as to prevent those who would challenge the incumbents from meaningful access to the electorate.

A qualification, such as the full initiation fee requirement, which can be fulfilled without substantial difficulty by anyone who wishes to run for office is not a bastion for the protection of an "entrenched leadership": it imposes no limit on the number of members opposed to the incumbents who can qualify; and, it neither discriminates against dissidents nor favors incumbents. Indeed, such a

requirement disqualifies *no one*. Any ineligible member assumes that status by choice and not because he is precluded from becoming a candidate. And the fact that a rule is the product of deliberation at the international union level and applies in local unions across the country provides a substantial measure of added assurance that it embodies a fair and neutral principle and is not the product of a temporary majority seeking to perpetuate itself by manipulating the rules to exploit a particular localized situation. Indeed, as recognized in *Local 6799 Steelworkers*, Congress's approval of, and reliance on, international union regulation of local union elections is written into Title IV. The exhaustion of internal remedies' requirement was included to provide "every international union the opportunity to correct improper local elections." S. Rep. No. 187, 86th Cong. 1st Sess., p. 21 (1959) quoted at 39 U.S.L.W. 4739.

The Secretary's present interpretation of § 401(e), if approved, would preclude the enactment, or retention, of international union eligibility requirements which allow the members an uncoerced choice as to whether to qualify. It sets a legal standard that is not a standard at all in the accepted sense. The normal presumption is that legal rules are intended to guide the conduct of those to whom they are addressed so that those persons can conform their activities to the law. But there is no way for a union to conform its election rules to the Secretary's norm. For that norm turns on a factor beyond the union's control—the number of members in each of hundreds of diverse locals who choose to meet a requirement that could be reasonably met by all. The rule limiting eligibility to "parent" body members, for example, applies throughout

the International Union of Operating Engineers.[2] But in one local, 80% are parent members, see, *Wirtz* v. *Local 406, Operating Engineers*, 254 F. Supp. 962, 966 (E.D. La.), while in the instant case, despite extensive and strenuous efforts by the Union's leadership to induce members to qualify, the figure is 40% (App. B. pp. 8a, 14a-15a). Indeed, experience teaches that the number who choose to qualify is not a direct function of the ease with which the requirement may be met. The paradigm case is *Martin* v. *Lodge 636 Boilermakers*, 245 F. Supp. 375 (W.D. Pa.) where the rule in question simply required attendance at one union meeting a quarter. It would have been impossible to further reduce the burden on potential candidates without eliminating the meeting attendance requirement entirely. Yet only 9% chose to qualify.[3]

The result, if the international fails to gauge the membership response properly, is, of course, that numerous local union elections will be set aside. It would therefore be irresponsible for an international to create a situation in which it subjects itself, and its subordinate bodies, to such a serious and unpredictable hazard. For the costs in disruption of the union's affairs attendant upon complaints by the Secretary in first one local and then another, and even in the same local at different times, depending on a changing and uncontrollable circumstance, would be prohibitive. Thus the practical consequence of the Secretary's

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[2] At the present time 229,047 of the International's 395,740 members, i.e. 58%, are "parent" members.

[3] The *Martin* court quite properly refused to invalidate the rule on the ground that to do so "would hold in effect that there can be no attendance requirement whatever in this union" (245 F. Supp. at 378).

theory is to preclude the use of rules which give every member a choice as to whether to qualify, and to restrict unions to rules which mandate the eligibility of a substantial majority. This adds a new limitation to those enacted by Congress. The Act provides that every member who wishes to run for office shall have a fair opportunity to do so. There is nothing in its language or legislative history which indicates a congressional desire for either automatic eligibility, or union sanctions designed to require that every member who could become eligible does so.

(c) *Hotel Employees* does not sanction the "less than fair" (p. 7 *supra*) result the Secretary sought, and secured from the lower courts in the instant case. The prior office holding rule at issue there by its terms disqualified a substantial majority of the entire membership (93%) and close to 100% of the potential opposition. Under that rule only 372 members (1.4% of the total membership), all of whom had to be supporters of the incumbents, could become eligible at any given election. See 391 U.S. at 500-503. These were not unexpected or unintended results. They were inherent in the structure of the rule itself, which created an absolute bar to the qualification of the overwhelming majority of the union's members. The number disqualified was a direct consequence of the union's requirement.

In the circumstances presented in *Hotel Employees* the application of a "percentage eligible" test was entirely proper. Where a rule sets a standard that it is beyond the power of certain members to meet and the number disqualified therefore follows automatically from the rule itself and can be calculated prior to the time the requirement is enacted there is no basis for the claim that applica-

tion of that test is inequitable because compliance is administratively unfeasible. For in such a case the rule's effect is predictable at a point in time at which the union can control its actions so as to comply with the law's requirements. And an eligibility rule which disqualifies a high percentage of the union's members on its face is plainly contrary to the purpose of Title IV. Such a rule deprives members who might wish to run for office, not simply of a fair opportunity, but of *all* opportunity, to unseat the incumbents. It is a "device which operates . . . [to further] control by incumbents" (391 U.S. at 505) since it entrenches the leadership by precluding election challenges by willing candidates.

If *Hotel Employees* is recognized to be a decision developing a "purposefully administered legal principle" (*Motor Coach Employees* v. *Lockridge*, 39 U.S.L.W. 4741, 4748) rather than being approached as an exercise in arid literalism, it follows from the points just stated that the "percentage eligible" test applied there does not apply here. For as the Secretary has stated, it is "less than fair" to apply such a test to a requirement that may "reasonably be met by every member," pp. 7-8 *supra*. And it does not serve the policy of § 401(e) to invalidate a rule fair on its face because a substantial number of the union's members choose not to meet the standard set. The Act is designed to prohibit "unduly restrictive" rules which preclude those who wish to be candidates a fair opportunity to run for office, p. 9 *supra*. In the instant case those who failed to qualify were ineligible because they, of their own volition, made a choice not to accept a fair opportunity open to them. They were not precluded by a requirement they were

powerless to meet. It follows without more that the rule is in conformity with the Act's provisions.

2. As a secondary ground of decision the Sixth Circuit concluded that the full initiation rule was unlawful on its face. The court below reasoned that financial preconditions on the right to run for union office beyond the minimum required for eligibility to vote are beyond the pale because they have "no parallel in our system of political elections" which served as "the model for democratic union election used by Congress in drafting the Act" (App. A. p. 6a); and because they are "not directly related to a candidate's ability to serve as an officer" (App. A. p. 5a). These points are without factual, logical or legal support, and if accepted, would require invalidation of one of the most common union eligibility rules—the requirement contained in over two-thirds of union constitutions covering three-quarters of union members that a candidate must have been in continuous good standing for a period of one to three years prior to the election. See U.S. Dept. of Labor, Union Constitutions and the Election of Local Union Officers, pp. 39-40, 83 (1965). This sweeping consequence of the decision below in itself justifies granting the Petition. Compare *Musicians* v. *Wittstein*, 379 U.S. 171, 175, 177-178.

(a) The major premise of the Sixth Circuit conclusion that the imposition of a financial obligation on the right to run for union office over and above that imposed on the right to vote is invalid *per se* is factually incorrect. Thirty-two states require candidates to pay filing fees. *Carter* v. *Dies*, 321 F.Supp. 1358, 1361 (N.D. Tex.) *probable jurisdiction noted* 39 U.S.L.W. 3533 (No. 70-128 Oct. Term 1971). And the weight of authority is that such financial

preconditions on candidacy are entirely lawful. E.g. *Wetherington* v. *Adams*, 309 F.Supp. 318 (N.D. Fla.) and the cases cited in *Carter*, 321 F.Supp. at 1364 n. 6. Indeed, even in *Carter*, which presents the extreme case of the payment of filing fees ranging from $1,424 to $8,900 by candidates in a primary election for county office, this Court refused to grant the motion to affirm a finding that the First and Fourteenth Amendments were violated and chose instead to set the case down for full argument.

(b) The Sixth Circuit's conclusion rests also on the supposition that under *Hotel Employees*, 391 U.S. at 504, rules governing political elections apply *pro tanto* to union elections. But there is nothing in that opinion to support the assertion that political elections are an exact blueprint for union elections rather than a generalized "model." Indeed, the Act itself precludes such a view. For it is settled that no financial precondition can be imposed on a citizen's right to vote. *Harper* v. *Virginia Board of Elections*, 383 U.S. 663. Section 401(e) nevertheless limits the right to vote to a union "member in good standing," i.e. a member who is current in his dues and fees. This is a plain recognition that while financial considerations are irrelevant in determining general citizenship rights, they are a valid core consideration in determining the scope of membership rights. The decision to treat unions differently in this regard is rooted in principle. The argument against allowing financial preconditions on the right to vote or run for office in the society at large is that the poor as well as the rich are entitled to exercise these rights and that such a requirement "invidiously discriminates" against the former. *Harper*, 383 U.S. at 666. But a union is a society

in which all the members have essentially equal incomes. Since the two societies are different there is no warrant for treating them alike. As this Court recently stated "sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Jenness* v. *Fortson,* 39 U.S.L.W. 4791, 4795. Thus, in dealing with financial preconditions to the exercise of political rights the utility of the political election model is severely limited.

(c) The third leg of the Sixth Circuit's theory is that § 401(e) was intended to restrict unions to eligibility rules which are "directly related to a candidate's ability to serve as an officer," (App. A. p. 5a). The court below cited no authority, legislative, administrative or judicial, to support the sharp limitation on the right of union members to order their affairs as they see fit entailed by its conclusion that enhanced "ability to serve as an officer" is the sole legitimate basis for eligibility rules; and so far as we are aware, there is no such authority.

The purpose of § 401(e)'s "reasonable qualification" provision is to insure that all union members who desire to become candidates will have a fair opportunity to do so, p. 9, *supra.* Given that purpose, and the use of the word "reasonable" the rational reading of Title IV is that a union's members are free to pursue any legitimate union purpose in structuring their eligibility rules and that the sole limitation on their freedom is that the resulting requirement not raise a substantial barrier to meaningful

access to the electorate by those who would challenge the incumbents.[4]

This has been the general understanding from the inception. As an influential early case stated, "a union organization has the right to . . . prescribe conditions which may be tests of good faith or designed for tokens of interest in the welfare of the union." *Goldberg* v. *Amarillo General Drivers*, 214 F.Supp. 74, 79 (N.D. Tex.). The most common such test, and the one involved in *Amarillo General Drivers*, is the requirement that a prospective candidate have made timely payment of his dues and other fees for a period of time prior to the election, see p. 14 *supra*. Despite the prevalence of these continuous good standing rules as a candidacy qualification Congress did not ban this requirement, instead it simply limited a potential for improper utilization of such rules stemming from the checkoff system of collecting dues.[5] And the Secretary has never attacked a continuous good standing rule on the ground adopted below, that only rules "directly related to a candidate's ability to serve" are lawful. Instead, as *Amarillo General*

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[4] In *Hotel Employees* the union argued that its highly restrictive rule should be sustained since it was directly related to ability to serve. This Court rejected that contention (391 U.S. at 503-504). The natural implication of this aspect of the decision is that it is the ease of qualifying and not the nature of the union interest being pursued that is determinative. And that is precisely the burden of our argument here.

[5] Section 401(e) states: "No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues."

Drivers indicates (214 F.Supp. at 77-78, 79), he has only moved against such rules when they are, for one reason or another, particularly onerous and, therefore, incompatible with § 401(e)'s guarantee that every member will have a fair opportunity to be a candidate.

Both the continuous good standing, and the full initiation fee, requirements impose a financial obligation on potential candidates over and above the financial obligation imposed on prospective voters. Both have the same policy base—to assure "a more highly motivated potential officer corps, who have demonstrated a greater degree of interest or stake in [the union] by a relatively limited commitment" (App. B. pp. 14a-15a). Dues and initiation fees are the lifeblood of a union. This being so a member who chooses to render less than prompt full financial support demonstrates that he is not truly interested in the organization's welfare, and shows a basic lack of good faith in his dealings with the union. Thus the end sought here is, as the District Court in this case stated, "entirely legitimate and rational" (App. B. pp. 15a-16a); and rules which require a higher than normal degree of financial responsibility by prospective candidates, as long as they do not impose an undue burden, are therefore entirely reasonable and lawful.

CONCLUSION

For the above stated reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

J. ALBERT WOLL
736 Bowen Building
815 Fifteenth Street, N.W.
Washington, D. C. 20005

WILLIAM PATRICK CLYNE
1510 Terminal Tower
Cleveland, Ohio 44113

Attorneys for Petitioner

July 1971

APPENDIX A

No. 20470

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES D. HODGSON, Secretary of Labor,
Plaintiff-Appellee,
v.
LOCAL UNIONS No. 18, ETC., INTERNATIONAL UNION OF OPERATING ENGINEERS,
Defendant-Appellant.

APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.

Decided and Filed April 9, 1971.

Before PHILLIPS, Chief Judge, and CELEBREZZE and PECK, Circuit Judges.

PHILLIPS, Chief Judge. This appeal presents the question of what is a reasonable qualification on the right to hold office in a labor union under the provisions of § 401(e) of the Labor-Management Reporting and Disclosure Act of 1959 (the Act), 29 U.S.C. § 481(e). The international constitution governing the appellant union (Local 18) contains a provision precluding members from running for union office unless they transfer from branch locals to a parent local at a cost prescribed by applicable by-laws at $75 to $90. This requirement disqualifies more than sixty per cent of all Local 18 members from running for office. District Judge Frank J. Battisti held that this qualification is unreasonable under § 401(e) of the Act.

The action was brought by the Secretary of Labor, pursuant to § 402(b) of the Act, 29 U.S.C. § 482(b), to set aside

the August 1965 election of officers of Local 18. The District Court declared the election void and ordered that the union conduct a new election of its officers under the supervision of the Secretary in accordance with the provisions of Title IV of the Act. It was further ordered that the new election be held so far as lawful and practical in conformity with the union's constitution, except that the requirement that candidates for local offices be members of a parent local not be applied or enforced in the supervised election.

We affirm.

Section 401(e) of the Act, 29 U.S.C. § 481(e) provides in pertinent part as follows:

> "In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and *every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed)* and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." (Emphasis added.)

The dispositive issue before the court is whether Local 18's eligibility requirement permitting only members of its Parent Local to hold union office is a "reasonable qualification uniformly imposed" on the right of every member in good standing to seek and hold union office.[1]

I.

Local 18 is subdivided into a Parent Local and three sub-

[1] Section 504, 29 U.S.C. § 504, referred to in 29 U.S.C. § 481(e), makes members of the Communist Party and persons convicted of certain crimes ineligible to hold union office and is not relevant to the issue before the court.

locals with membership, as of July 1, 1965, immediately prior to the election in question, as follows:

Parent Local	4349 members
Local 18A	579 members
Local 18B	4840 members
Local 18C	1571 members

Members of all four subdivisions are members in good standing of Local 18 but as previously stated only members of the Parent Local are eligible to run for union office. The sub-locals do not have officers.

Members of Local 18 sub-locals may become eligible to run for union office by transferring to the Parent Local.[2] In order to transfer to the Parent Local, a sub-local member must pay the Parent Local's initiation fee, less the initiation fee he had already paid to the sub-local.[3]

The initiation fee for each of Local 18's subdivisions is as follows:

Parent Local	$100
Local 18A	$ 25
Local 18B	$ 25
Local 18C	$ 10

Thus, a member transferring to the Parent Local from Local 18A or Local 18B would be required to pay an addi-

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[2] Both the Secretary of Labor and Local 18 agree that the Union's additional requirement that transferees to the Parent Local must wait one year before running for union office is not before the court on this appeal. Since we hold that the requirement of membership in the Parent Local is unreasonable, the validity of the one-year requirement becomes moot.

[3] The additional requirement that sub-local members "be qualified to operate one or more types of equipment within [Local 18's] jurisdiction and be able to earn a livelihood thereby" as a prerequisite to membership in the Parent Local (and therefore to holding union office) was held by the District Court to be an unreasonable qualification within the meaning of 29 U.S.C. § 481(e). This ruling is not challenged on this appeal.

tional $75, and from Local 18C, $90, to satisfy the Parent Local initiation fee of $100. Any member of a local subdivision is required to make such a payment in order to become a candidate for union office.

The only benefits received by members of the Parent Local not shared by members of the sub-locals are:

(1) An additional $500 in life insurance;

(2) A paid-up life membership after 30 years (five of which years may be as a member of a branch); and

(3) The right to run for and hold union office.

Otherwise, all members of Local 18 enjoy identical benefits from union membership and may participate fully in union government.

II.

Local 18's restrictive eligibility rule precludes over sixty per cent of its members from seeking union office. The Supreme Court held in *Wirtz* v. *Hotel Employees Union Local 6*, 391 U.S. 492, 499, that:

> "Congress plainly did not intend that the authorization in § 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording that 'every member in good standing shall be eligible to be a candidate and to hold office. . . .' This conclusion is buttressed by other provisions of the Act which stress freedom of members to nominate candidates for office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." (Footnote omitted.)

We hold that the rule in question is manifestly unreasonable.

The rule has no bearing on the fitness of sub-local members to hold union office. The District Court found that "the Union's rule admittedly is not directly related to a candidate's ability to serve as an officer. . . ." Local 18 does not challenge any findings of fact of the District Court and does not seriously claim before this court that members of the Parent Local are more qualified (i.e. fitted) to hold union office than members of the sub-locals.

The preclusion of sixty per cent of the members of Local 18 from seeking union office without regard to their fitness to hold office is inconsistent with the intent of Congress in 29 U.S.C. § 481(e):

> "[T]o protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and, through the election process, to keep the union leadership responsive to the membership."

See *Wirtz* v. *Hotel Employees Union Local 6, id.,* at 497-98.

Local 18 contends that the eligibility requirement is reasonable because all members of the union may transfer their membership to the Parent Local by paying the higher initiation fee and thereby become eligible for union office. Local 18 further contends that the initiation fee schedule set forth above is an important financing and recruiting device and that the fee for Parent Local membership is reasonably priced.

The emphasis of the Union's argument is misplaced. The determinative question is not whether the Parent Local's package of benefits is reasonably priced, but whether the right to run for union office may be packaged and sold. Any sub-local member desiring to run for union office must purchase the entire package of benefits. We hold that it is unreasonable to require that all candidates for union

office purchase union sponsored life insurance and the right to a paid-up union membership as a prerequisite to eligibility to hold office.

Further, we hold that it is unreasonable to require that an individual who has met all financial and other prerequisites to becoming a union member in good standing to pay an additional $75 to $90 for the right to run for union office.

The model for democratic union elections used by Congress in drafting the Act was political elections in this country. *Wirtz* v. *Hotel Employees Union Local 6, id.* at 504. A requirement that all candidates for union office be members of a particular subdivision of the union has no parallel in our system of political elections. To sell the right to run for union office as a union recruiting and financing technique is patently undemocratic. We hold that the requirement in question is inconsistent "with the Act's command to unions to conduct 'free and democratic' union elections." *Wirtz* v. *Hotel Employees Union Local 6, id.* at 499.

The judgment of the District Court is affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLARD WIRTZ, Secretary of Labor, United States Department of Labor,

Plaintiff,

v.

LOCAL UNIONS NOS. 18, 18A, 18B and 18C, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Defendants.

No. C 66-167

MEMORANDUM OPINION AND ORDER

BATTISTI, J.

This is an action brought pursuant to Section 402(b) of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter referred to as the Act), 29 U.S.C.A., § 482(b), to set aside defendants' regular election of officers conducted in August of 1965. The issue presented for decision is whether the requirement of defendants' International Constitution that candidates for local offices be members of the parent Local Union is a "reasonable qualification" within the meaning of Section 401(e) of the Act, 29 U.S.C.A., § 481(e).[1]

Section 401(e) of the Act, 29 U.S.C.A., § 481(e) provides in pertinent part:

> "In any election required by this section which is to be held by secret ballot, a reasonable opportunity shall be given for the nomination of candidates and *every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this*

[1] Certain other issues raised by the complaint have been resolved by way of a stipulation filed on April 12, 1967.

title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization of any member thereof. . . .'' (Emphasis supplied.)

This action was tried to the Court without a jury. After the taking of testimony, consideration of the evidence and the arguments and briefs of counsel, the case is ready for decision.

Local 18 is divided into six geographic districts, each of which is supervised by a District Representative appointed by the Business Manager. Each District has a Planning Board which represents a cross section of the members of Local 18 and acts as an advisory group.

All branch members of Local 18 have the right under the International Constitution to nominate candidates, to vote in the elections and referendums of the Local, to attend and participate in meetings of Local 18, and to vote for, nominate and be delegates to the General Convention of the I.U.O.E., which has the power to amend the International Constitution.

Members of the Parent receive no increment in wage rates over branch members by reason of membership in the Parent Local. Wages are determined by the equipment or machinery operated, or the kind of function performed. Members of the Parent receive no preference over members of the branches in job referrals.

No branch member has ever been barred from joining the Parent. The consistent policy of Local 18, and the Parent in particular, has been to encourage branch members to transfer, by letter, notices in the Union's newspaper, and orally at meetings.

In July, 1965, 38.5% of the members of Local 18 were members of the Parent; in 1959, the percentage was 29.38; and at the time of trial, approximately 40%. The percentage of Local 18 members in the Parent has increased slowly but steadily in this period.

Local 18 has kept initiation fees relatively low for admission into the branches in order to compete effectively with other labor organizations in the recruitment of new members, and to give new men an opportunity to try out work with Local 18 before making a permanent or long-run commitment.

The membership of Local 18 of the International Union of Operating Engineers is divided into four groups—the Parent Local,[2] Local 18A, Local 18B, and Local 18C. The members of Locals 18A, 18B, and 18C are commonly referred to as "branch" members. Local 18A members are generally employed as oilers, greasers, firemen, helpers and apprentices. Local 18B members can operate one or more types of equipment, which come within the jurisdiction of Local 18 and are considered "journeymen engineers." Local 18C members are quarrymen, sand and gravel employees, equipment shop employees, and technical and field engineers. (Defendants' answers to plaintiff's interrogatories Nos. 6, 41 and 49.) The members of the Parent Local are skilled operators of equipment which comes within the jurisdiction of Local 18, have demonstrated ability to earn their livelihood performing this work, and have paid the Parent's initiation fee.

Local 18 conducted an election of officers by mail referendum between August 12, 1965, and August 30, 1965, pursuant to its own bylaws and the Constitution of the International Union. Local 18 announced the results of this

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[2] The Parent Local has sometimes been referred to as "Local 18." In this opinion, "Local 18" will refer to all four groups rather than to the Parent Local alone.

August, 1965 election after completing the tally of the ballots.

In the instant action, the Secretary does not challenge the "branch" system per se. Rather, he merely challenges the provision in the Constitution whereby branch members are excluded from eligibility to run for and hold office.[3]

As of July 1, 1965, the membership breakdown of Local 18 was as follows:

Parent Local	4,349 members
Local 18A	579 members
Local 18B	4,840 members
Local 18C	1,571 members

A random sampling of branch members eligible to vote on July 1, 1965, indicates that 74.1% of such members had spent three years or more in a branch local; that over two-thirds had spent five years or more in a branch local; and

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[3] Article XIV, Section 5 of the International Constitution provides: "Any Junior and Assistant Engineers' Subdivision, Registered Apprentice Engineers' Subdivision or Branch Engineers' Subdivision heretofore or hereafter created by the sub-charters referred to in this Article, shall function under the direction and control of the parent Local Union to which the same belongs. They shall be accountable to and function under their parent Local Union and they shall respond to, be under the control of and be governed by the said parent Local Union; provided, however, that the members of the said Junior and Assistant Engineers' Subdivision, Registered Apprentice Engineers' Subdivision, Registered Apprentice Engineers' Subdivision and the Branch Engineers' Subdivision, if in good standing as required by the International Union and credited with their per capita tax paid to and remitted by the parent *Local Union*, may vote upon such referendums as shall be submitted to the parent *Local Union* for them by the International Union. They shall be entitled to such participation in the Death Benefit Fund as may be provided for them by the International Union. ***Except as otherwise provided in this Constitution, they may not hold office in their parent Local Union.*** There shall be no officers in the subdivisions. . . ." (Emphasis added.)

that over 35% had spent ten years or more in a branch local.

As of July 1, 1965, the initiation fee for the Parent Local was $100.00; for Local 18A and B, $25.00; and for Local 18C, $10.00. The monthly dues for the Parent Local were $7.00; for Local 18A, $6.00; for Local 18B, $7.00; and for Local 18C, $5.00. A branch member who wishes to transfer to the Parent and is otherwise qualified can transfer by paying the difference between the initiation fee for his particular branch and the initiation fee required for membership in the Parent. Therefore, members of the A and B branches would have to pay an increment of $75.00, and the members of Branch C would pay a differential of $90.00.

The only benefits which members of the Parent Local receive in exchange for their greater financial contributions are:

(1) an additional $500.00 in life insurance,

(2) a paid-up life membership after thirty years (five of which years may be as a member of a branch), and

(3) the right to run for and hold office (after having been a member in good standing of the Parent Local for one year).

Local 18 views the requirement of initiation fees for admission to the Parent as a method of assuring a more highly motivated potential officer corps, who have demonstrated a greater degree of interest or stake in Local 18 by a relatively limited commitment.

Additional income derived from transfers to the Parent by higher dues and initiation fees are important to Local 18 in meeting the substantial expenses of operating the Union.

Some branch men never operate or learn to operate equipment or machinery within the jurisdiction of Local 18

through choice or inability. Several members of the A Branch are "professional oilers" who have made decisions to work permanently as oilers and not to learn how to run equipment, or transfer to the Parent.

Unlike the usual work of members of the Parent and the A and B Branches, which is seasonal and on a "job-to-job" basis, the typical C Branch members have a 52 week job similar to production laborers in a factory, and are not much interested in transferring to the Parent. Some C Branch members, however, do operate the same equipment as members of the Parent and the B Branch.

There was no formal apprentice program in July, 1965 when this cause arose, although one has been registered since with the Ohio State Apprenticeship Council in 1966, but training took place in the branch members' spare time as they had the opportunity.

There is no additional training in matters of union administration afforded to members of the Parent or those desiring to join the Parent.

The single issue of law presented, whether the branch system of Local 18 is "unreasonable" under Section 401(e) of the Act in its effect disqualifying branch members from becoming officers of Local 18, is divisible into two relatively distinct parts. First, there is the requirement that members of the Parent must be qualified to operate one or more types of equipment within the jurisdiction of Local 18 and be able to earn a livelihood thereby; and second is the incremental initiation fees required for membership in the Parent. The two issues will be discussed in order.

Local 18 is organized in such a fashion that apprentices and persons occupying "helper jobs" are full members of the Union in every way (with the exception that they can't be officers of the Union), unlike the structure of many unions in which helper-type laborers are separately organized, and apprentices are not full members of the union.

By inability or choice, therefore, members of the A and C Branches can permanently be employed without becoming skilled enough to meet this requirement. Witness the evidence of a group of "professional oilers."

Furthermore, with respect to the C Branch, there is a clear need for members of this branch to become officers because their interests are somewhat distinct from the interests of the A and B Branches. The typical C Branch man toils in a quarry, almost like a production worker in a factory, whereas the typical member of the other branches and the Parent is employed in the construction industry on a job-to-job basis. Moreover, within the C Branch there is a very wide range of job functions from equipment shop repairmen to technical engineers all the way to those who operate equipment similar to that operated by members of the B Branch and the Parent. It is admitted, further, that few C Branch members desire to transfer to the Parent and that transfers seldom occur.

It is therefore found and ordered that the Parent membership requirement be declared "unreasonable" within the meaning of Section 401(e) of the Act in that it requires all members of the Union to be qualified to operate equipment within the jurisdiction of Local 18 with the capability of earning a livelihood thereby, with the effect of permanently depriving those members of Local 18 who neither choose nor have the ability to operate machinery of the right to become officers of the Union. See, *Acevedo* v. *Book-Binders and Machine Operators, Local 25,* 196 F.Supp. 308 (1961).

It should be noted that the effect of this order does not in any way mitigate the power and right of Local 18 to continue with and expand its apprentice program, nor its right to bargain for differing wage rates based on the relative skills or functions of the members of each branch. Nor is it the intent of this order to denigrate the importance

of experience in the running of union affairs. In fact, the stipulation submitted by the parties recognizes the legitimacy of certain "good standing" and "attendance" requirements for union officership. The purpose of the order is only to make it clear that officership should not be qualified by a requirement that one be qualified to operate certain machinery with enough skill to earn a living thereby in a local union, the structure of which is comprised of men organized across craft lines, some of whom are skilled, others, unskilled; some employed in the construction area, others operating in a factory environment.

The second aspect of Local 18's branch system challenged by the Secretary is the requirement that members of Branches A and B contribute $75.00 and members of Branch C, $90.00, as an initiation fee for entrance to the Parent. This issue, as presented by the facts of this case, is a very close one.

In the first place, only approximately 60% of Local 18's membership is disqualified from seeking office by virtue of the requirement of Parent membership. This percentage is distinctly lower than the percentage which other courts have found before declaring office restrictions "unreasonable" under the Act.[4] Moreover, the percentage of membership in the Parent has increased slowly but steadily from approximately 30% to approximately 40% in the past eight or nine years.

Secondly, the leadership of Local 18 does not appear to have adopted an "entrenched" mentality, the removal of which was the principal intent of the Act. It is undenied

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[4] 98% in *Wirtz* v. *Hotel, Motel and Club Employees' Union, Local 6*, 391 U.S. 492 (1968); 93% in *Wirtz* v. *National Maritime Union of America*, 399 F.2d 544 (2nd Cir. 1968); 87% in *Wirtz* v. *Local Union No. 9, 9A, and B, International Union of Operating Engineers*, 254 F.Supp. 980 (1965); 75% in *Wirtz* v. *Local 153, Glass Bottle Blowers Assoc.*, 244 F.Supp. 745 (1965).

by the Secretary that no branch member who expressed a desire to transfer and was willing to pay the initiation fee was ever denied entrance to the Parent. Moreover, the evidence is clear that the leadership actively and persistently encouraged branch members to transfer to the Parent. In fact, the additional insurance and paid-up membership benefits of the Parent membership were included by Local 18 with the express purpose of inducing transfers to the Parent. Finally, Local 18's two purposes in requiring the additional initiation fees appear to be legitimate and rational measures. Those purposes are: (1) to raise additional revenue to meet the operating expenses of the union, and (2) to attract for the Parent persons more likely to be motivated and interested in union affairs by this relatively limited stake, or commitment.

Nevertheless, a decision declaring the initiation aspect of Parent membership to be "unreasonable" under Section 401(e) is compelled by the broad and strongly-worded language of the United States Supreme Court in the *Local 6* case, *supra*. The Court indicates that it would strike down any candidacy qualification for union office which "substantially depletes the ranks of those who might run in opposition to the incumbents." As applied to this case, the requirement which has at all times had the effect of disqualifying over 60% of Local 18's membership would appear to fall within the scope of this language. Moreover, while it is not the feeling of this tribunal that the amount of money involved is unreasonable in a colloquial sense, especially considering the relatively low initiation fee for entrance to the branches and the additional insurance and paid-up dues benefits, some members of Local 18 unequivocally did state at trial that the money was a deterrent from transferring to the Parent.

Further, while it would appear to be reasonable for a union to fashion rules to assure a higly motivated and

committed officer corps, the *Local 6* case has severely circumscribed a union's power to use this kind of rule as a qualification for candidacy. Without regard to whether a given leadership is malevolent or benevolent, the Court has suggested that qualifications which assume that rank and file union members are unable to distinguish qualified from unqualified candidates are "unreasonable." The Supreme Court emphasized that the proper model for union officer elections is Congressional elections in which the assumption is that the voters will exercise common sense in judgement in casting their ballots. Of course, the facts in the *Local 6* case are arguably distinguishable. *Local 6* dealt with a "prior office" requirement; and the union in that case had inconsistently administered its own rule. But the broad language and implication of the High Court would indicate the same result here, where the Union's rule admittedly is not directly related to a candidate's ability to serve as an officer, but rather relates to his motivation.

It is the finding and order of this Court that Local 18's requirement that candidates for office be members of the Parent is "unreasonable" under Section 401(e) of the Act.

It is further found pursuant to 29 U.S.C.A., § 482(c) that the requirement of Parent membership "may have affected the outcome of the election."

The parties are hereby instructed to confer with the end of rectifying the violation found herein and planning the conduct of future elections consistent with this opinion. The parties are to report to the Court within 45 days of this decision.

The foregoing opinion constitutes the findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GEORGE P. SHULTZ, Secretary of Labor, United States Department of Labor, *Plaintiff*, v. LOCAL UNIONS No. 18, 18A, 18B, and 18C, INTERNATIONAL UNION OF OPERATING ENGINEERS, *Defendant*.	CIVIL ACTION No. C 66-167

ORDER DIRECTING DEFENDANT TO CONDUCT A NEW ELECTION OF ITS OFFICERS UNDER PLAINTIFF'S SUPERVISION

On April 10, 1969, this Court filed its Memorandum Opinion and Order in this case wherein the parties were instructed to confer with the end of rectifying the violations found herein and planning the conduct of future elections consistent with this opinion.

The parties having been unable to agree on a mutually satisfactory solution, it is hereby on motion of the plaintiff:

ORDERED, ADJUDGED AND DECREED:

1. That the election of officers held by the defendant in August of 1965, be, and it hereby is, declared to be void for the reasons stated in this Court's Memorandum Opinion and Order filed in this case on April 10, 1969.

2. That the defendant shall conduct a new election of its officers under the supervision of the plaintiff. Such new election shall be conducted in accordance with the provisions of Title IV of the Labor-Management Reporting and

Disclosure Act of 1959 (29 U.S.C. 481 *et. seq.*) and, so far as lawful and practicable, in conformity with its own By-Laws and the Constitution of the International Union of Operating Engineers except that Article XIV, Section 5 of the said International Constitution, which requires that candidates for local offices be members of the parent Local Union, shall not be applied or enforced in said supervised election.

3. That this action will be held on the docket of this Court pending completion of the election referred to above. If, after completion of the election, the Secretary certifies to the Court that such election was conducted in accordance with the provisions of the Act and, so far as lawful and practicable, in conformity with its own By-Laws and the Constitution of the International Union of Operating Engineers except as hereinabove provided, the Court will enter a Judgment declaring that the persons named in the certification are the duly elected officers of defendant, to serve until defendant's next regularly scheduled election.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71–49

LOCAL UNION NO. 18, INTERNATIONAL UNION OF OPERATING ENGINEERS, PETITIONER

v.

JAMES D. HODGSON, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Ohio, Eastern Division (Pet. App. B), is not officially reported. The opinion of the Court of Appeals for the Sixth Circuit (Pet. App. A) is reported at 440 F. 2d 485.

JURISDICTION

The judgment of the court of appeals was entered on April 9, 1971. The petition for a writ of certiorari was filed on July 8, 1971. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

441-040—71

QUESTION PRESENTED

Whether a union's requirement which precludes members of one sub-local from running for union office unless they first transfer to another sub-local (at a cost ranging from $75 to $114 for the first year) violates the right to run for office guaranteed to all union members by Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481(e), when the requirement disqualifies about 60 percent of the union's membership.

STATUTE INVOLVED

Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481 *et seq.*, provides in pertinent part:

> In any election required by this section which is to be held by secret ballot * * * every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) * * *.

STATEMENT

This action was brought by the Secretary of Labor under Section 402(b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482(b), to set aside an election of officers of petitioner local union. The principal issue in the courts below was whether the union's requirement that, in order to run for office, a member must transfer from one sub-local to another, at a substantial cost to himself, violates Section 401(e) of the Act, 29 U.S.C. 481(e). The district court held that the transfer require-

ment violates Section 401(e) and the court of appeals affirmed.

1. Local Union 18 is divided into four sub-locals: Local 18A, Local 18B, Local 18C, and a "Parent Local".[1] Local 18A members generally work as oilers, greasers, firemen, helpers and apprentices; Local 18B members operate various types of construction equipment; and Local 18C members generally work in quarries. Most members of the "Parent Local" are skilled operators of equipment (Pet. App. 9a). The wages of any member of Local 18 are determined by the type of work he performs. Members of the "Parent Local" receive no increment in wage rates, or preference in job referrals, over members of the other sub-locals. However, under the union's constitution, only members of the "Parent Local" are permitted to run for office in Local 18 (Pet. App. 7a).[2]

If a member of Local 18 (other than a member of the "Parent Local") chooses to run for union office, he must transfer to the "Parent Local". The transfer involves a substantial expenditure for the union members. For a member of Local 18A, the transfer costs $87 for the first year after the transfer (comprised of a $75 initiation fee, and $12 more in dues than is chargeable to a member of a branch local) and $12 for each year thereafter. For a member of Local 18B, the cost is a flat $75. For the members of Local 18C, the cost is $114 for the first year, and $24 for each

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[1] In this brief, "Local 18" or the "union" refers to the entire local union, *i.e.*, the composite of all four sub-locals. Sub-locals are specifically referred to by name.

[2] The sub-locals in Local 18 do not elect officers of their own.

year thereafter.[3] If a member transfers to the "Parent Local", he receives, in addition to the right to run for office, an additional $500 in life insuance and a paid up life membership after 30 years. (Pet. App. 11a). The union's constitution also requires a prospective candidate to have been a member in good standing of the "Parent Local" for one year before he becomes eligible to run for office (Pet. App. 3a).[4]

The union's transfer requirement has served to disqualify about 60 percent of its members from running for office.[5] This burden falls most heavily upon the union's poorest members, particularly those in

[3] These figures are based on the following facts: In order to transfer to the "Parent Local", a member of a branch must pay the Parent's $100 initiation fee, less the initiation fee already paid to the branch, which is $25 for Local 18A and Local 18B, and $10 for Local 18C. Thus the cost of the initiation fee alone is $75 for members of Local 18A and 18B and $90 for members of Local 18C. In addition, members of Local 18A would incur an increase in monthly dues of $1, or $12 per year, and members of Local 18C would incur an increase in monthly dues of $2, or $24 per year (App. 8). ("App." references are to the Appendix filed by the parties in the court of appeals, a copy of which we have lodged with this Court.)

[4] This provision is not at issue in the present suit; however, it effectively increases the impact of the "Parent Local" membership requirement, because it means that even if an employee pays the additional sum to become a member of the "Parent Local", he is not immediately eligible to run for office.

[5] As of July 1, 1965, just before the election at issue here, the membership of Local 18 was as follows (Pet. App. 3a):

Local 18A, 579 members.

Local 18B, 4840 members.

Local 18C, 1571 members.

Parent Local, 4349 members.

Local 18C. With respect to those employees, the union President testified (App. 51):

> Well, they are predominantly in the quarries and sand pits and have pretty much of a permanent job, and they might—and they are in a much lower scale.
>
> They would sort of resent the request of paying the $90. There might be an objection there.

During the seven years prior to the challenged election the cost of transferring has served to disqualify approximately 97 percent of Local 18C's members from running for office.[6] Several union members testified at trial that the cost had been a deterrent to their transferring (App. 33, 42, 47, 51).

2. This action was brought by the Secretary of Labor, pursuant to Section 402(b) of the Act, 29 U.S.C. 482(b), to set aside the August 1965 election of officers of Local 18. As stated in the district court's opinion (Pet. App. 12a), the Secretary attacked two separate aspects of the transfer requirement: (1) a rule that only persons with specific job skills could join the "Parent Local", and (2) the requirement that a member transfer from a branch local to the "Parent Local" in order to run for office. The district court held both requirements invalid (Pet. App. 12a–16a).

On appeal, the union challenged the district court's holding only with respect to the transfer require-

[6] During the seven years from 1959 through 1965, a total of only 43 of Local 18C's members transfered to the "Parent Local". As previously noted, *supra*, n. 5, in 1965 Local 18C had 1571 members.

ment (and not the job skill requirement). The court of appeals affirmed, on the grounds that (1) the rule's effect of precluding about 60 percent of the members from running for office substantially depletes the ranks of those who might run in opposition to the incumbents, and therefore impairs the use of democratic elections as a preventive measure against abuses of union power, see *Wirtz* v. *Hotel Employees Union, Local 6*, 391 U.S. 492, 499 (Pet. App. 4a–5a); (2) the requirement that union members incur a substantial cost prior to becoming eligible to run for office has no bearing on the fitness of those members to hold office (Pet. App. 5a); and (3) the requirement that an individual who has met all the financial and other prerequisites to becoming a member in good standing pay a substantial additional sum in order to run for office is "patently undemocratic", and has no parallel in political elections in this country, the model for union elections used by Congress in drafting the Act (Pet. App. 6a), see *Wirtz* v. *Local 6, supra,* 391 U.S. at 504.

ARGUMENT

The decision of the court of appeals is clearly correct, and there is no conflict among the circuits. Accordingly, there is no need for further review by this court.

1. As this Court held in *Wirtz* v. *Hotel Employees Union, Local 6,* 391 U.S. 492, 499:

> Congress plainly did not intend that the authorization in § 401(e) of "reasonable qualifications uniformly imposed" should be given a broad reach. The contrary is implicit in the

> legislative history of the section and in its wording * * *. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to the incumbents.

The union's transfer requirement—and its cost to the members—disqualifies approximately 60 percent of the members of the union as a whole, and about 97 percent of the persons in the sub-local whose members earn the lowest wages. Thus the requirement undoubtedly has "substantially deplete[d]" the ranks of those who might oppose the incumbents. See *Wirtz* v. *Local 6, supra,* 391 U.S. at 502.

2. Petitioner's argument that the transfer requirement can easily be met by anyone who cares to qualify for union office is without merit, because a member's ability or willingness to incur a substantial expenditure bears no relation to his ability to hold office. As the district court stated, "the Union's rule admittedly is not directly related to a candidate's ability to serve as an officer * * *" (Pet. App. 16a). "Parent Local" members do not receive any training to run the union which branch members do not receive (App. 25). Branch operating engineers attend the same membership and planning board meetings, and have the same right to participate and vote at those meetings, as do parent members, and have served as delegates to the International Convention (App. 26). "[Q]uite a few" branch members attend and participate in monthly meetings of the "Parent Local" (App. 34–36, 39–40, 45).

In this respect, the requirement under challenge here is less rational than the one struck down in *Local 6, supra.* For in *Local 6* the pertinent bylaw provided that only union members who have previously held elective union office could run for major elective office. Arguably, a candidate's prior experience in holding union office has a bearing on his fitness to hold major elective office. See 391 U.S. at 503. In this case, by contrast, the transfer requirement has no bearing whatsoever on a candidate's ability to hold union office.

3. Finally, the transfer requirement cannot be reconciled with the fact that in enacting the statute, "Congress' model of democratic elections was political elections in this country". *Wirtz* v. *Local 6, supra,* 391 U.S. at 504. The transfer requirement and its resulting cost to members is, as the court of appeals stated, "patently undemocratic" (Pet. App. 6a). As the court of appeals correctly indicated, a union may sell life insurance or a paid-up lifetime membership in the union, but it cannot sell the right to run for union office (Pet. App. 5a).

There is no merit to the union's suggestion (Pet. 14–15) that its transfer requirement is analogous to a filing fee. Regardless of whether a union might charge declared candidates a reasonable filing fee (to be used, for example, to cover the cost of printing ballots), the transfer requirement bears no relationship to such a fee. Unlike a filing fee, the transfer requirement here ranges in price from a flat $75 for members of Local 18B to a continuing expense of $114 for the first year, and $24 for each year thereafter, for members of Lo-

cal 18C. And no such "fee" is paid at all by candidates who are already members of the Parent Local. Furthermore, the money obtained by the union when members transfer to the "Parent Local" is not earmarked to pay the costs of conducting an election, but is used for general purposes.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
L. PATRICK GRAY, III,
Assistant Attorney General.
WALTER H. FLEISCHER,
RAYMOND D. BATTOCCHI,
Attorneys.

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Supreme Court of the United States

October Term, 1971

LOCAL UNION No. 18, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Petitioner,

v.

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY FOR PETITIONER

J. ALBERT WOLL
736 Bowen Building
815 15th Street, N. W.
Washington, D. C. 20005

WILLIAM PATRICK CLYNE
1510 Terminal Tower
Cleveland, Ohio 44113
Attorneys for Petitioner

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REPLY FOR PETITIONER

The Brief In Opposition serves to underscore, rather than undermine, the merit of the Petition. The Secretary of Labor tacitly concedes its major points by declining to respond to them. And his counter-arguments are flawed by plain errors of fact and logic.

1. (a) The basic issue raised in the Petition (at pp. 2, 7-14) is whether an eligibility requirement setting a standard that could be reasonably met by all the union's members becomes invalid *per se* in the event that a sub-

stantial percentage of the members choose not to meet that standard, thereby leading to their disqualification. In the Opposition (at pp. 6-7) the Secretary places his main reliance, as he has throughout this litigation, on the contention that *Wirtz* v. *Hotel Employees,* 391 U.S. 492, establishes such a percentage test.

The "less than fair" rule the Secretary now espouses is contrary to his position as of 1966, and to his request in *Hodgson* v. *Local 6799 Steelworkers,* 403 U.S. 333, that this Court grant certiorari to settle the very question "of national importance in the administration of the Act" presented here. Pet. pp. 7-8. Moreover that rule is destructive of established democratic trade union practices; and it can only be derived from *Hotel Employees* if that decision is read as stating an absolute standard to be applied across the board even though that frustrates the Act's policies, rather than as declaring "a purposefully administered legal principle" which, like any such principle, "is not . . . without exception" *(Motor Coach Employees* v. *Lockridge,* 403 U.S. 274, 297). Pet. pp. 8-14.

The Secretary does not touch upon, because he cannot do business with, any of the foregoing points. And that alone is, we submit, ample reason for granting the Petition.

(b) Aside from his reliance on the language of *Hotel Employees* the burden of the Secretary's response is that:

> "Petitioner's argument that the transfer requirement can easily be met by anyone who cares to qualify for union office is without merit, because a member's ability or willingness to incur a substantial expenditure bears no relation to his ability to hold office. As the district court stated, 'the Union's rule admittedly is not

directly related to a candidate's ability to serve as an officer * * *' (Pet. App. 16a)." Br. In Opp. p. 7.

That rule "relates [instead] to [the candidate's] motivation" (Pet. App. p. 16a); it is "a method of assuring a more highly motivated potential officer corps, who have demonstrated a greater degree of interest or stake in Local 18 by a relatively limited commitment" (Pet. App. p. 11a).

If there were anything in the legislative history, this Court's opinions, or the Secretary's administration of the Act, to demonstrate that qualifications are "reasonable" only if they are directly related to a candidate's ability to serve as an officer, our position—that the rule in question is valid because any member who wishes to qualify can do so easily—would indeed be "without merit." But none of these preconditions are satisfied. There is nothing in the legislative history or this Court's opinions to indicate that Congress wished to make enhanced ability to serve as an officer the sole legitimate basis for eligibility rules. And the Secretary has, from the first, permitted unions to continue to utilize "continuous good standing" rules, which like the instant rule simply measure a candidate's interest in the union's welfare. Pet. pp. 14, 17-18. Thus the argument developed at pp. 7-9 of the Opposition is a complete *non sequitur*, the sole function of which is to appear to answer the Petition without in fact doing so.

(c) The Secretary's statement of the case, and one portion of his argument (Br. In Opp. pp. 3-5, 8-9) are designed to create the impression that the Union's rule imposes a substantial burden which "falls most heavily upon [its] poorest members," and which is not imposed on "can-

didates who are already members of the Parent Local." The record refutes each of the foregoing suggestions.

First, the full initiation fee requirement is uniformly imposed. Every candidate must pay that fee as a condition of eligibility. To be sure, a candidate who is "already [a] member of the Parent Local" (Br. In Opp. pp. 8-9) does not have to make any payment at the time of his candidacy. But that is because he has previously made the required payment, not because he has been exempted from a requirement imposed on others. Thus every member is treated equally.

Second, while the "C Branch" members receive the lowest hourly wage, they work continuously all year. The work of the Union's remaining members is seasonal. A. 56. Thus the Secretary's characterization of those in the C Branch as "the union's poorest members" (Br. In Opp. p. 4) is unjustified by the record. Moreover, the import of the statement of Union President Possehl, quoted at p. 5 of the Opposition, is distorted by having been taken out of context. His testimony in its entirety makes it plain that it was his view that the "C Branch" members were restrained from transferring by the Union's skill requirement. A. 56-57. And that requirement is no longer an issue in the instant case because the Union did not challenge the District Court's conclusion that it was unreasonable in the Court of Appeals. Pet. App. n. 3 at p. 3a.

Third, any requirement which is more than *de minimis* will cause some members to forego their opportunity to become eligible. Thus, as we have stressed (Pet. pp. 9-10), the question in every case in which the rule accords the members an uncoerced choice is whether the union has set

the standard too high, thereby depriving potential challengers of a fair opportunity to qualify. The District Court was plainly correct in finding that the full initiation fee requirement was not unlawfully stringent. Judge Battisti noted "it is not the feeling of this tribunal that the amount of money involved is unreasonable in a colloquial sense." Pet. App. p. 15a. The proof of this lies in the fact that approximately two out of every five members of the Union, a total of 4,349 men, have chosen to pay the full initiation fee. The minimum that must be shown to prove that a standard has been set at too high a level is that at least one member who wished to qualify could not do so because of the rule. No such demonstration was made here. The record does not establish that the members who have not transferred to the "parent" local were precluded from doing so because the payment required would work a financial hardship. Seven "branch" members testified at the trial. Their testimony indicates that their choice was based on a lack of interest, rather than inability to pay. A. 32-34, 37-38, 40-48. Given the number who have qualified and the lack of any reason to suppose, or any evidence to suggest, that any member at all interested in an active role in the Union would find the full initiation fee requirement a barrier, this qualification cannot rationally be classified as a "device which operate[s] . . . [to further] control by incumbents." *Hotel Employees*, 391 U.S. at 505.

2. The Court of Appeals took it as self-evident that the imposition of a financial obligation on potential candidates beyond the minimum imposed on prospective voters is "patently undemocratic" and thus unlawful *per se*. Pet. App. p. 6a. The Opposition merely echoes this theme. Br.

In Opp. pp. 8-9. But this proposition has not been self-evident to the thirty-two states that require filing fees, to this Court (see *Dies* v. *Carter*, 403 U.S. 904), or to the Secretary in the administration of the Act, since he has sanctioned "continuous good standing" rules. Pet. pp. 14-18.

In this instance, as the others, the Secretary ventures no direct reply to our position; instead he argues that the initiation fee "bears no relationship to a [filing] fee" because it "ranges in price" for different members, and because it "is not earmarked to pay the costs of conducting an election but is used for general purposes." Br. In Opp. pp. 8-9. The first of these counters is unfounded as a matter of fact. Every member of the Union must pay the same total fee to become eligible—$100. Pet. App. pp. 3a-4a. And the second, even assuming its factual predicate, is unsound as a matter of logic.[1] From the candidate's point of view a fee to defray election costs is indistinguishable from one that is used for general purposes. And the Secretary suggests, and we can conceive of, no basis in democratic theory for preferring a fee used for one purpose rather than the other.

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[1] It is not our understanding that as a general matter filing fees are "earmarked" in special trust funds rather than being paid into the states' general funds.

CONCLUSION

For the foregoing reasons the Petition for A Writ of Certiorari should be granted.

Respectfully submitted,

J. ALBERT WOLL
736 Bowen Building
815 15th Street, N. W.
Washington, D. C. 20005

WILLIAM PATRICK CLYNE
1510 Terminal Tower
Cleveland, Ohio 44113
Attorneys for Petitioner

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